

CENTER FOR DISABILITY ACCESS  
Amanda Seabock, Esq., SBN 289900  
Prathima Price, Esq., SBN 321378  
Dennis Price, Esq., SBN 279082  
Mail: 8033 Linda Vista Road, Suite 200  
San Diego, CA 92111  
(858) 375-7385; (888) 422-5191 fax  
[amandas@potterhandy.com](mailto:amandas@potterhandy.com)

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson,**

Plaintiff,

v.

**W2005 New Century Hotel  
Portfolio, L.P.,** a Delaware Limited  
Partnership;  
**W2005 New Century Hotel  
Portfolio GP, L.L.C.,** a Delaware  
Limited Liability Company; and  
Does 1-10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of W2005 New Century Hotel Portfolio, L.P., a Delaware Limited Partnership; W2005 New Century Hotel Portfolio GP, L.L.C., a Delaware Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

1       2. Defendants W2005 New Century Hotel Portfolio, L.P., and W2005  
2 New Century Hotel Portfolio GP, L.L.C. owned the real property located at or  
3 about 1801 Barber Lane, Milpitas, California, between June 2019 and  
4 December 2019.

5       3. Defendants W2005 New Century Hotel Portfolio, L.P., and W2005  
6 New Century Hotel Portfolio GP, L.L.C. own the real property located at or  
7 about 1801 Barber Lane, Milpitas, California, currently.

8       4. Defendants W2005 New Century Hotel Portfolio, L.P., and W2005  
9 New Century Hotel Portfolio GP, L.L.C. owned Sheraton located at or about  
10 1801 Barber Lane, Milpitas, California, between June 2019 and December  
11 2019.

12       5. Defendants W2005 New Century Hotel Portfolio, L.P., and W2005  
13 New Century Hotel Portfolio GP, L.L.C. own Sheraton (“Hotel”) located at or  
14 about 1801 Barber Lane, Milpitas, California, currently.

15       6. Plaintiff does not know the true names of Defendants, their business  
16 capacities, their ownership connection to the property and business, or their  
17 relative responsibilities in causing the access violations herein complained of,  
18 and alleges a joint venture and common enterprise by all such Defendants.  
19 Plaintiff is informed and believes that each of the Defendants herein,  
20 including Does 1 through 10, inclusive, is responsible in some capacity for the  
21 events herein alleged, or is a necessary party for obtaining appropriate relief.  
22 Plaintiff will seek leave to amend when the true names, capacities,  
23 connections, and responsibilities of the Defendants and Does 1 through 10,  
24 inclusive, are ascertained.

25  
26       **JURISDICTION & VENUE:**

27       7. The Court has subject matter jurisdiction over the action pursuant to 28  
28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with

1 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

2 8. Pursuant to supplemental jurisdiction, an attendant and related cause  
3 of action, arising from the same nucleus of operative facts and arising out of  
4 the same transactions, is also brought under California's Unruh Civil Rights  
5 Act, which act expressly incorporates the Americans with Disabilities Act.

6 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
7 founded on the fact that the real property which is the subject of this action is  
8 located in this district and that Plaintiff's cause of action arose in this district.

9  
10 **FACTUAL ALLEGATIONS:**

11 10. Plaintiff visited in June 2019, July 2019 (twice), December 2019 and  
12 stayed in the Hotel in July 2019 with the intention to avail himself of its  
13 services, motivated in part to determine if the defendants comply with the  
14 disability access laws.

15 11. The Hotel is a facility open to the public, a place of public  
16 accommodation, and a business establishment.

17 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed  
18 to provide wheelchair accessible parking in conformance with the ADA  
19 Standards as it relates to wheelchair users like the plaintiff.

20 13. On information and belief the defendants currently fail to provide  
21 wheelchair accessible parking.

22 14. Additionally, on the dates of the plaintiff's visits, the defendants failed  
23 to provide wheelchair accessible guestrooms in conformance with the ADA  
24 Standards as it relates to wheelchair users like the plaintiff.

25 15. On information and belief the defendants currently fail to provide  
26 wheelchair accessible guestrooms.

27 16. Moreover, on the dates of the plaintiff's visits, the defendants failed to  
28 provide wheelchair accessible transaction counters in conformance with the

1 ADA Standards as it relates to wheelchair users like the plaintiff.

2 17. On information and belief the defendants currently fail to provide  
3 wheelchair accessible transaction counters.

4 18. These barriers relate to and impact the plaintiff's disability. Plaintiff  
5 personally encountered these barriers.

6 19. As a wheelchair user, the plaintiff benefits from and is entitled to use  
7 wheelchair accessible facilities. By failing to provide accessible facilities, the  
8 defendants denied the plaintiff full and equal access.

9 20. The failure to provide accessible facilities created difficulty and  
10 discomfort for the Plaintiff.

11 21. The defendants have failed to maintain in working and useable  
12 conditions those features required to provide ready access to persons with  
13 disabilities.

14 22. The barriers identified above are easily removed without much  
15 difficulty or expense. They are the types of barriers identified by the  
16 Department of Justice as presumably readily achievable to remove and, in fact,  
17 these barriers are readily achievable to remove. Moreover, there are numerous  
18 alternative accommodations that could be made to provide a greater level of  
19 access if complete removal were not achievable.

20 23. Plaintiff will return to the Hotel to avail himself of its services and to  
21 determine compliance with the disability access laws once it is represented to  
22 him that the Hotel and its facilities are accessible. Plaintiff is currently  
23 deterred from doing so because of his knowledge of the existing barriers and  
24 his uncertainty about the existence of yet other barriers on the site. If the  
25 barriers are not removed, the plaintiff will face unlawful and discriminatory  
26 barriers again.

27 24. Given the obvious and blatant nature of the barriers and violations  
28 alleged herein, the plaintiff alleges, on information and belief, that there are

1 other violations and barriers on the site that relate to his disability. Plaintiff will  
 2 amend the complaint, to provide proper notice regarding the scope of this  
 3 lawsuit, once he conducts a site inspection. However, please be on notice that  
 4 the plaintiff seeks to have all barriers related to his disability remedied. See  
 5 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 6 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 7 disability removed regardless of whether he personally encountered them).

8  
 9 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 10 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 11 Defendants.) (42 U.S.C. section 12101, et seq.)

12 25. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 13 again herein, the allegations contained in all prior paragraphs of this  
 14 complaint.

15 26. Under the ADA, it is an act of discrimination to fail to ensure that the  
 16 privileges, advantages, accommodations, facilities, goods and services of any  
 17 place of public accommodation is offered on a full and equal basis by anyone  
 18 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 19 § 12182(a). Discrimination is defined, inter alia, as follows:

- 20 a. A failure to make reasonable modifications in policies, practices,  
 21 or procedures, when such modifications are necessary to afford  
 22 goods, services, facilities, privileges, advantages, or  
 23 accommodations to individuals with disabilities, unless the  
 24 accommodation would work a fundamental alteration of those  
 25 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 26 b. A failure to remove architectural barriers where such removal is  
 27 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 28 defined by reference to the ADA Standards.

1 c. A failure to make alterations in such a manner that, to the  
 2 maximum extent feasible, the altered portions of the facility are  
 3 readily accessible to and usable by individuals with disabilities,  
 4 including individuals who use wheelchairs or to ensure that, to the  
 5 maximum extent feasible, the path of travel to the altered area and  
 6 the bathrooms, telephones, and drinking fountains serving the  
 7 altered area, are readily accessible to and usable by individuals  
 8 with disabilities. 42 U.S.C. § 12183(a)(2).

9 27. When a business provides parking for its customers, it must provide  
 10 accessible parking.

11 28. Here, accessible parking has not been provided.

12 29. When a business provides facilities such as guestrooms, it must provide  
 13 accessible guestrooms.

14 30. Here, accessible guestrooms have not been provided.

15 31. When a business provides facilities such as sales or transaction counters,  
 16 it must provide accessible sales or transaction counters.

17 32. Here, accessible sales or transaction counters have not been provided.

18 33. The Safe Harbor provisions of the 2010 Standards are not applicable  
 19 here because the conditions challenged in this lawsuit do not comply with the  
 20 1991 Standards.

21 34. A public accommodation must maintain in operable working condition  
 22 those features of its facilities and equipment that are required to be readily  
 23 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

24 35. Here, the failure to ensure that the accessible facilities were available  
 25 and ready to be used by the plaintiff is a violation of the law.

26  
 27 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
 28 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.

1 Code § 51-53.)

2 36. Plaintiff repleads and incorporates by reference, as if fully set forth  
3 again herein, the allegations contained in all prior paragraphs of this  
4 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
5 that persons with disabilities are entitled to full and equal accommodations,  
6 advantages, facilities, privileges, or services in all business establishment of  
7 every kind whatsoever within the jurisdiction of the State of California. Cal.  
8 Civ. Code § 51(b).

9 37. The Unruh Act provides that a violation of the ADA is a violation of the  
10 Unruh Act. Cal. Civ. Code, § 51(f).

11 38. Defendants’ acts and omissions, as herein alleged, have violated the  
12 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
13 rights to full and equal use of the accommodations, advantages, facilities,  
14 privileges, or services offered.

15 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
16 discomfort or embarrassment for the plaintiff, the defendants are also each  
17 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
18 (c).)

19 40. Although the plaintiff was markedly frustrated by facing discriminatory  
20 barriers, even manifesting itself with minor and fleeting physical symptoms,  
21 the plaintiff does not value this very modest physical personal injury greater  
22 than the amount of the statutory damages.

23  
24 **PRAYER:**

25 Wherefore, Plaintiff prays that this Court award damages and provide  
26 relief as follows:

27 1. For injunctive relief, compelling Defendants to comply with the  
28 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the

1 plaintiff is not invoking section 55 of the California Civil Code and is not  
2 seeking injunctive relief under the Disabled Persons Act at all.

3 2. Damages under the Unruh Civil Rights Act, which provides for actual  
4 damages and a statutory minimum of \$4,000 for each offense.

5 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
6 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

7  
8 Dated: March 2, 2020

CENTER FOR DISABILITY ACCESS

9  
10 By:

11 

12 \_\_\_\_\_  
13 Amanda Seabock, Esq.  
14 Attorney for plaintiff  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28